

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

**BATON ROUGE GENERAL
MEDICAL CENTER**

AI # 140 & 24937

**PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT
LA. R.S. 30:2001, ET SEQ.**

* **Settlement Tracking No.**

* **SA-RE-07-0018**

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* **Enforcement Tracking No.**

* **RE-CN-03-0175**

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* **Docket No. 2004-2977-EQ**

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SETTLEMENT

The following Settlement is hereby agreed to between Baton Rouge General Medical Center ("Respondent") and the Department of Environmental Quality ("DEQ" or "the Department"), under authority granted by the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq. ("the Act").

I

Respondent is a corporation who is in possession of radioactive material (RAM) under the provisions of Radioactive Material License number LA-0003-01 issued by the Department. The facility known as Baton Rouge General Medical Center-Mid City, Agency Interest 140, is located at 3600 Florida Blvd. in Baton Rouge, East Baton Rouge Parish, Louisiana. The facility known as Baton Rouge General Medical Center-Bluebonnet, Agency Interest 24937, is located at 8585 Picardy Avenue in Baton Rouge, East Baton Rouge Parish, Louisiana.

II

On January 25, 2004, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. RE-CN-03-0175, which was based upon the following findings of fact:

On August 7, 2003, an inspection of the Respondent's Florida Blvd. Facility revealed the following violations:

- A. The Respondent's nuclear medical technicians failed to wear disposable gloves at all times while handling radioactive material, in violation of LAC 33:XV.320.A.2, and RAM License LA-003-L01, amendment 52, and the procedures contained in the licensee's application: Radioactive Material Administration, Rules of Safe Use of Radiopharmaceuticals.
- B. The Respondent failed to secure licensed radioactive material from unauthorized use, in violation of LAC 33:XV.445.A. Specifically, the hot room where the nuclear medicine is stored was unlocked.
- C. The Respondent failed to conduct a physical inventory of all sealed sources at intervals not to exceed three months, in violation of LAC 33:XV.719.G. Specifically, the inventory was not available as required and two (2) Co-57 sheet sources were in storage but were not listed. The Respondent has included the two (2) Co-57 sheet sources on the physical inventory.
- D. The Respondent failed to post a current copy of the Radiation Protection Regulations, Radioactive Material (RAM) license, LA-0003-L01, amendment 52, in violation of LAC 33:XV.1011.A.1 & 2. Specifically, the 1999 edition of the Radiation Protection Regulations was available and RAM license LA-0003-L01, amendments 50 and 51 were posted and on file, respectively. This violation was corrected at the time of the inspection.

On August 21, 2003, an inspection of the Respondent's Picardy Avenue facility revealed the following violations:

- A. The Respondent failed to perform quality control procedures on a weekly basis, in violation of LAXC 33:XV.714.A. Specifically, quality controls were performed on July 30, 2003, August 9, 2003, and August 21, 2003.
- B. The Respondent failed to include the signature of the radiation safety officer on the linearity records from May 4, 2001, to August 7, 2003, in violation of LAC 33:XV.715.E.3.
- C. The Respondent failed to include the radionuclides disposed and the model and serial number of the survey instrument used, in violation of LAC 33:XV.728.B.

III

In response to the CCONOPP, Respondent made a timely request for a hearing which was filed on March 3, 2004 and captioned as: "Appeal, Request for Adjudicatory Hearing, Answer and Affirmative Defenses by Baton Rouge General Medical Center to Consolidated Compliance Order and Notice of Potential Penalty." This matter was docketed as 2004-2977-EQ. Respondent withdrew this hearing request on February 16, 2006.

IV

Respondent denies it committed any violations or that it is liable for any fines, forfeitures and/or penalties.

V

Nonetheless, Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of TEN THOUSAND THREE HUNDRED AND NO/100 DOLLARS (\$10,300.00), of which ONE HUNDRED AND SEVENTY AND 91/100 DOLLARS (\$170.91) represents DEQ's enforcement

costs, in settlement of the claims set forth in this agreement. The total amount of money expended by Respondent on cash payments to DEQ as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

VI

Respondent further agrees that the Department may consider the inspection report(s), the CCONOPP and this Settlement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent, and in any such action Respondent shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Respondent's compliance history.

VII

This agreement shall be considered a final order of the secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms of this agreement, except such review as may be required for interpretation of this agreement in any action by the Department to enforce this agreement.

VIII

This settlement is being made in the interest of settling the state's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in LSA- R. S. 30:2025(E) of the Act.

IX

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in EAST BATON ROUGE PARISH, Louisiana. The advertisement, in form, wording, and size approved by the Department, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondent has submitted a proof-of-publication affidavit to the Department and, as of the date this Settlement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

X

Payment is to be made within ten (10) days from notice of the Secretary's signature. If payment is not received within that time, this Agreement is voidable at the option of the Department. Payments are to be made by check, payable to the Department of Environmental Quality, and mailed or delivered to the attention of Accountant Administrator, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303. Each payment shall be accompanied by a completed Settlement Payment Form (Exhibit A).

XI

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

XII

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his or her respective party, and to legally bind such party to its terms and conditions.

**BATON ROUGE GENERAL
MEDICAL CENTER**

BY: Dionne Viator
(Signature)

Dionne E. Viator
(Print)

TITLE: Sr. V.P.' CFO

THUS DONE AND SIGNED in duplicate original before me this 5th day of
December, 2007, at Baton Rouge, LA.

Ashly C. LeBlanc
NOTARY PUBLIC (ID # 65585)

Ashly C. LeBlanc
(Print)

**LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY**

Harold Leggett, Ph.D., Secretary

BY: Peggy M. Hatch

Peggy M. Hatch, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 3rd day of
April, 2008 at Baton Rouge, Louisiana

T. R. Braswell, Jr.
NOTARY PUBLIC (ID # 40539)
(Print)

Approved Harold Leggett
Harold Leggett, Ph.D., Assistant Secretary